LEE ENG EOW

v.

LOW AH LIAN & ANOR.

HIGH COURT MALAYA, PENANG
ABDUL HAMID MOHAMED JC
[ORIGINATING SUMMONS NO. 24-976-89]
25 JULY 1991

SUCCESSION: *Probate and Administration - Shares - Deceased bequeathed whole estate to wife and 2 sons - Articles of association provided that the shares of family company could only be transferred to male descendants of the (deceased) - Meaning of 'transfer' vs. 'transmission' - Legal title vs. equitable title - Whether articles of association override provisions of will.*

The (deceased) father was the registered owner of 1300 shares in a family company. By a will he bequeathed all his remaining estate to his wife (1st defendant) and his sons LEE (plaintiff) and LEH, who predeceased the (deceased).

The articles of association of the family company however prohibited the transfer of shares to persons other than the male descendants. The plaintiff claims that he is entitled to all the shares.

The only question for determination was whether the provisions of the company's articles of association overrode the provisions of the will.

Held:

[1] Although Article 16 prohibits the transfer of shares to persons other than the male descendants of the (deceased), it does not prevent a transmission of the shares. Therefore even if it was not possible for the 1st defendant to have the shares registered in her name, it did not mean that she was not entitled to the shares as an equitable owner under the will.

[Application dismissed with costs.]

Case referred to:
Re Greene [1949] Ch 333 ***(cit)***

Other sources referred to:
Halsbury's Laws of England, 4th Edn. Vol. 7, para. 417
Executors, Administrators and Probate by William's Mortimer and Sinnucks, 16th Edn., at p. 947

For the plaintiff - Foong Kai Choong; M/s. B.C. Teh & Yeoh
For the defendants - Tan Phock Kin; Thillaimuthu & Phock Kin

[**Ediotr's note:** The plaintiff has appealed to the Supreme Court on 12 July 1991 *vide* SCCA No. 2-286-91]

JUDGMENT

Abdul Hamid Mohamed JC:

By an originating summons the plaintiff prayed for:

1. A declaration that Lee Eng Eow, being the surviving male descendant of Lee Guat Cheow (deceased) is entitled under the will of Lee Guat Cheow (deceased) dated 18 April 1972 to absolute ownership of 1300 shares in the company known as the Lee Guat Cheow & Co. Sdn. Bhd. belonging to Lee Guat Cheow (deceased).

2. An order that the board of directors of Lee Guat Cheow Sdn. Bhd. do all acts and deeds as may be necessary to give effect to the above declaration including effecting the transfer of the said shares now in the name of Lee Guat Cheow (deceased) into the name of Lee Eng Eow;

Lim Eng Eow is a co-executor of the estate of Lee Guat Cheow, (deceased). The (deceased) died on 5 September 1980 leaving a will. Under clause 6 of the will, the (deceased) devised and bequeathed all his remaining estate to his wife (1st defendant) and his sons Lee Eng Eow (plaintiff) and Lee Eng Hai. Lee Eng Hai predeceased the (deceased). The (deceased) is a registered owner of 1300 shares in the company known as Lee Guat Cheow & Co. Sdn. Bhd. (2nd defendant). Clause 16 of the articles of association of the company provides:

> 16. Shares of the company can be transferred by a member only to any of the male descendants of Lee Guat Cheow in the male line; and shares standing in the name of the trustees of the will of any (deceased) member may be transferred upon any change of trustees for the time being of such will.

Being the sole surviving male descendant of the (deceased), the plaintiff claims that he is entitled to the whole of the 1300 shares.

However, in the course of the argument Counsel for the plaintiff made a concession that the male descendants of Lee Eng Hai were also entitled to the shares.

The facts are not in dispute. The only question for determination is whether the provisions of Article 16 of the articles of association of the company over-rides the provision of the will.

Put simply the argument of Counsel for the plaintiff was that as the (deceased) in his life-time could not have transferred the shares to the 1st defendant because of Article 16, he could not do the same after his death by a provision in his will. On the other hand Counsel for the defendants pointed out that there was a difference between "transfer" and "transmission".

What Article 16 prohibits is the transfer of shares to persons other than his male descendants. "Transfer" means transfer of legal title to shares by registering the transferee as the owner of the shares. It does not prevent transmission.

Halsbury's Laws of England, 4th Edn., Vol. 7, at para. 417 makes a clear distinction between "transmission" and "transfer".

> Transmission means "transmission by operation of law, including devolution by death ..." On the other hand a "transfer" is a transfer by the act of a member.

In *Executors, Administrators and Probate* by William, Mortimer and Sinnucks, 16th Edn., at p. 947, it is said:

> The articles of a company cannot, however, by-pass the personal representatives. If they purport themselves to operate a transfer they are invalid to this extent.

Re Greene [1949] Ch 333 was cited as authority for that proposition.

I am of the view that even if it would not be possible for the 1st defendant to have the shares registered in her name, that does not mean that she would not be entitled to the shares as an equitable owner under the will.

The application is dismissed with costs. My earlier order dated 2 January 1991 is set aside.

Also found at [1991] 3 CLJ 2874